

ORDINANCE NO.: 2012-22 (AMENDED NOVEMBER 13, 2012)
(AMENDED NOVEMBER 27, 2012)

SPONSOR: MAYOR NORTON

INTRODUCED: OCTOBER 9, 2012

ASSIGNED TO: TCS

AN ORDINANCE REGULATING ILLICIT DISCHARGES IN AND INTO THE CITY OF GREEN'S STORM SEWER SYSTEM, AND DECLARING AN EMERGENCY.

WHEREAS, illicit discharges to the municipal separate storm sewer system create water quality risks to public health; and

WHEREAS, illicit discharges may necessitate repair of storm sewers and ditches; damage to public and private property; and may damage water resources by reducing water quality; and

WHEREAS, there are ongoing watershed-wide efforts to reduce illicit discharges to the Tuscarawas and Nimisila Rivers and their tributaries in order to protect and enhance the unique water resources of the Tuscarawas and Nimilisa watersheds; and

WHEREAS, 40 C.F.R. Parts 9, 122, 123 and 124, and Ohio Administrative Code 3745-39 require designated communities, including the City of Green to develop a Storm Water Management Program that, among other components, require the City of Green to prohibit illicit discharges in and into to their storm water sewer system; and, to implement appropriate enforcement procedures and actions to detect and eliminate such illicit discharges; and

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GREEN, COUNTY OF SUMMIT AND STATE OF OHIO, THAT:

SECTION ONE:

PURPOSE AND SCOPE

The purpose of this **Ordinance regulation** is to provide for the public health, safety, and general welfare of the citizens of the ~~Summit County Combined General Health District (hereafter Health District)~~ **City of Green** through the **Ordinance regulation** of illicit discharges to the municipal separate storm sewer system (MS4) and waters of the state. This **Ordinance regulation** establishes methods for controlling the introduction of pollutants into the MS4 and the waters of the state in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process as required by the Ohio Environmental Protection Agency (Ohio EPA). The objectives of this **Ordinance regulation** are:

- (a) To prohibit illicit discharges and illegal connections to the MS4, onto the ground surface, into common drainage tiles, ditch, creek, stream or other body of water.
- (b) To establish legal authority to carry out inspections, monitoring procedures, and enforcement actions necessary to ensure compliance with this **Ordinance regulation**.

SECTION TWO:

APPLICABILITY AND ADMINISTRATION

This **Ordinance regulation** shall apply to all residential, commercial, industrial, or institutional facilities responsible for discharges as described in **Section One (a) 1.A.** and on any lands in the **Health District City of Green** and:

- (a) Where the ~~city~~ **City, village or township** has entered into a memorandum of agreement with ~~the Health District~~ **another governmental entity** to provide such service, and
- (b) Except for those discharges generated by the activities detailed in Section ~~1250.06 (a)(1) to (b)(3)~~ **Seven** of this **regulation Ordinance**.

SECTION THREE:

DEFINITIONS

The words and terms used in this Ordinance, unless otherwise expressly stated, shall have the following meaning:

- (a) ~~Authorized Enforcement Agency: The Health District, its employees and/or designees.~~
- (a)(b) **Best Management Practices (BMPs):** means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to storm water. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.
- (b)(e) **Clean Water Act:** The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments.
- (c)(d) **Community:** means the ~~county~~ **City** offices and departments, ~~cities, villages and townships within the Health District,~~ its designated representatives, boards, or commissions.
- (d)(e) **Environmental Protection Agency or United States Environmental Protection Agency (USEPA):** means the United States Environmental Protection Agency, including but not limited to the Ohio Environmental Protection Agency (Ohio EPA), or any duly authorized official of the agency.
- (e)(f) **Floatable Material:** in general this term means any foreign matter that may float or remain suspended in the water column, and includes but is not limited to, plastic, aluminum cans, wood products, bottles, and paper products.
- (f)(g) **Hazardous Material:** means any material including any substance, waste, or combination thereof, which because of its quantity, concentration, physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
- (g)(h) **Illicit Discharge:** as defined at 40 C.F.R. 122.26 (b)(2) means any discharge to an MS4 that is not composed entirely of storm water, except for those discharges to an MS4 pursuant to a NPDES permit or noted in Section 7 of this **Ordinance regulation**.
- (h)(i) **Illegal Connection:** means any drain or conveyance, whether on the surface or subsurface, that allow an illicit discharge to enter the MS4.
- (i)(j) **Industrial Activity:** activities subject to NPDES Industrial permits as defined in 40 CFR,

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Section 122.26 (b)(14).

(j)(k) Municipal Separate Storm Sewer System (MS4): as defined at 40 C.F.R. 122.26 (b)(8), municipal separate storm sewer system means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

- (1) Owned or operated by a ~~state~~ State, city, town, borough, county, parish, district, municipality, township, county, district, association, or other public body (created by or pursuant to ~~state~~ State law) having jurisdiction over sewage, industrial wastes, including special districts under State law such as a sewer district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under ~~Section~~ section 208 of the Clean Water Act that discharges to waters of the United States;
- (2) Designed or used for collecting or conveying storm water;
- (3) Which is not a combined sewer; and
- (4) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 C.F.R. 122.2.

(k)(l) National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit: means a permit issued by the EPA (or by ~~the State a~~ State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

(l)(m) Off-Lot Discharging Home Sewage Treatment System: means a system designed to treat home sewage on-site and discharges treated wastewater effluent off the property into a storm water or surface water conveyance or system.

(m)(n) Owner/Operator/Person: means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or on the owner's behalf.

(n)(o) Pollutant: means anything that causes or contributes to pollution. Pollutants may include, but are not limited to, paints, varnishes, solvents, oil and other automotive fluids, non-hazardous liquid and solid wastes, yard wastes, refuse, rubbish, garbage, litter or other discarded or abandoned objects, floatable materials, pesticides, herbicides, fertilizers, hazardous materials, wastes, sewage, dissolved and particulate metals, animal wastes, residues that result from constructing a structure, and noxious or offensive matter of any kind.

(o)(p) Premises: any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

(p)(q) Storm Water: any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

~~(r) Summit county Combined General Health District (Health District): the local health district, its designated representative and board.~~

(q)(s) Wastewater: The spent water of a community. From the standpoint of a source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings,

industrial plants, and institutions.

(r)(t) Waters of the State: state means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and other bodies or accumulations of water, surface and underground, natural or artificial, regardless of the depth of the strata in which underground water is located, that are situated wholly or partly within, or border upon, this **State state**, or are within its jurisdiction, except those private waters that do not combine or effect a junction with natural surface or underground water.

SECTION FOUR:

DISCLAIMER OF LIABILITY

Compliance with the provisions of this **Ordinance regulation** shall not relieve any person from responsibility for damage to any person otherwise imposed by law. The provisions of this **Ordinance regulation** are promulgated to promote the health, safety, and welfare of the public and are not designed for the benefit of any individual or for the benefit of any particular parcel of property.

SECTION FIVE:

CONFLICTS, SEVERABILITY, NUISANCES & RESPONSIBILITY

- (a) Where this **Ordinance regulation** is in conflict with other provisions of law or ordinance, restrictive provisions, as determined by the ~~Authorized Enforcement Agency~~ **City of Green**, shall prevail.
- (b) If any clause, section, or provision of this **Ordinance regulation** is declared invalid or unconstitutional by a court of competent jurisdiction, the validity of the remainder of this **Ordinance** shall not be affected. ~~thereby.~~
- (c) This **Ordinance regulation** shall not be construed as authorizing any person to maintain a nuisance on their property, and compliance with the provisions of this **Ordinance regulation** shall not be a defense in any action to abate such a nuisance.
- (d) Failure of the ~~Authorized Enforcement Agency~~ **City of Green** to observe or recognize hazardous or unsightly conditions or to recommend corrective measures shall not relieve the site owner from the responsibility for the condition or damage resulting from hazardous or unsightly conditions and shall not result in the ~~Authorized Enforcement Agency~~ **City of Green**, its officers, employees, or agents being responsible for any condition or damage resulting from hazardous or unsightly conditions.

SECTION SIX:

RESPONSIBILITY FOR ADMINISTRATION

The City of Green shall administer, implement, and enforce the provisions of this **Ordinance regulation**. The City of Green may contract with the Summit County Combined General Health District to conduct inspections and monitoring and to assist with enforcement actions.

SECTION SEVEN:

DISCHARGE AND CONNECTION PROHIBITIONS

- (a) Prohibition of Illicit Discharges. No person shall discharge, or cause to be discharged, an illicit discharge into the MS4. The commencement, conduct, or continuance of any illicit discharge to the MS4 is prohibited except:
- (1) Water line flushing; landscape irrigation; diverted stream flows; rising ground waters; uncontaminated ground water infiltration; uncontaminated pumped ground water; discharges from potable water sources; foundation drains; air conditioning condensate; irrigation water; springs; water from crawl space pumps; footer drains; lawn watering; individual residential car washing; flows from riparian habitats and wetlands; dechlorinated swimming pool discharges; street wash water; and discharges or flows from fire fighting activities. These discharges are exempt until such time as they are determined by the ~~Authorized Enforcement Agency~~ **City of Green** to be significant contributors of pollutants to the MS4.
 - (2) Discharges specified in writing by the ~~Authorized Enforcement Agency~~ **City of Green** as being necessary to protect public health and safety.
 - (3) Discharges from off-lot household sewage treatment systems permitted by the ~~Summit County Health District~~ **City of Green** for the purpose of discharging treated sewage effluent in accordance with Ohio Administrative Code 3701-29-02(6) until such time as the Ohio Environmental Protection Agency issues a NPDES permitting mechanism for residential 1, 2, or 3 family dwellings. These discharges are exempt unless such discharges are deemed to be creating a public health nuisance by the ~~Summit County Board of Health~~ **City of Green**. In compliance with the **Community** ~~community~~ Storm Water Management Program, discharges from all off-lot household sewage treatment systems must either be eliminated if found not to be eligible for an NPDES permit for existing discharges or receive coverage under an appropriate NPDES permit issued and approved by the Ohio Environmental Protection Agency. When such permit coverage is available, discharges from off-lot discharging household sewage treatment systems will no longer be exempt from the requirements of this **Ordinance** ~~regulation~~.
- (b) Prohibition of Illegal Connections. The construction, use, maintenance, or continued existence of illegal connections to the MS4 is prohibited.
- (1) This prohibition expressly includes, without limitation, illegal connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
 - (2) A person is considered to be in violation of this regulation if the person connects a line conveying illicit discharges to the MS4, or allows such a connection to continue.

SECTION EIGHT:

MONITORING OF ILLICIT DISCHARGES AND ILLEGAL CONNECTIONS

- (a) Establishment of an Illicit Discharge and Illegal Connection Monitoring Program: The ~~Health District~~ **City of Green** has established this program to detect and eliminate illicit discharges and illegal connections to the MS4 including the systematic investigation of potential residential, commercial, industrial, and institutional facilities for the sources of any dry weather flows found as the result of these inspections.
- (b) Inspection of Residential, Commercial, Industrial, or Institutional Facilities.
- (1) The ~~Health District~~ **City of Green** shall be permitted to enter and inspect facilities subject to this ~~Ordinance regulation~~ as often as may be necessary to determine compliance with this ~~Ordinance regulation~~.
 - (2) The ~~Health District~~ **City of Green** shall have the right to set up at facilities subject to this ~~Ordinance regulation~~ such devices as are necessary to conduct monitoring and/or sampling of the facility's storm water discharge, as determined by the Health District.
 - (3) The ~~Health District~~ **City of Green** shall have the right to require the facility owner/operator to install monitoring equipment as necessary. This sampling and monitoring equipment shall be maintained at all times in safe and proper operating condition by the facility owner/operator at the owner/operator's expense.
 - (4) Any temporary or permanent obstruction to safe and reasonable access to the facility to be inspected and/or sampled shall be promptly removed by the facility's owner/operator at the written or oral request of the ~~Health District~~ **City of Green** and shall not be replaced. The costs of clearing such access shall be borne by the facility owner/operator.
 - (5) Unreasonable delays in allowing the ~~Health District~~ **City of Green** access to a facility subject to this ~~Ordinance regulation~~ for the purposes of illicit discharge inspection is a violation of this ~~Ordinance regulation~~.
 - (6) If the ~~Health District~~ **City of Green** is refused access to any part of the facility from which storm water is discharged, and the ~~Health District~~ **City of Green** demonstrates probable cause to believe that there may be a violation of this ~~Ordinance regulation~~, or that there is a need to inspect and/or sample as part of an inspection and sampling program designed to verify compliance with this ~~Ordinance regulation~~ or any order issued hereunder, or to protect the public health, safety, and welfare, the ~~Health District~~ **City of Green** may seek issuance of a search warrant, civil remedies including but not limited to injunctive relief, and/or criminal remedies from any court of appropriate jurisdiction.
 - (7) Any costs associated with these inspections, pollution source tracking, enforcement and abatement shall be assessed to the facility owner/operator.

SECTION NINE:

RIPARIAN ZONE PROTECTION

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse. The maintenance of structures and work within a riparian zone shall not violate the Riparian Setback Ordinance, ~~Chapter 937 Section 1229.13~~, of the Codified Ordinances of ~~Summit County or other locally adopted riparian protection regulations~~ **Green**.

SECTION TEN:

NOTIFICATION OF SPILLS

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or waters of the state, the person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, ~~the said~~ person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, ~~the said~~ person shall notify the authorized enforcement agency in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the authorized enforcement agency within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

SECTION ELEVEN:

ENFORCEMENT

- (a) Notice of Violation. When the ~~Health Commissioner~~ **City of Green** finds that a person has violated a prohibition or failed to meet a requirement of this ~~Ordinance regulation~~, the ~~Health Commissioner~~ **City of Green** may order compliance by written Notice of Violation. Such notice must specify the violation and shall be hand delivered, and/or sent by registered mail, to the owner/operator of the facility. Such notice may require the following actions:
- (1) The performance of monitoring, analyses, and reporting;
 - (2) The elimination of illicit discharges or illegal connections;
 - (3) That violating discharges, practices, or operations cease and desist;

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- (4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; or
- (5) The implantation of source control or treatment BMPs
- (b) If abatement of a violation and/or restoration of affected property is required, the Notice of Violation shall set forth a deadline within which such remediation or restoration must be completed. ~~Said~~ **The** Notice shall further advise that **a legal action for enforcement may be initiated if should** the facility owner/operator fail to remediate or restore within the established deadline. ~~a legal action for enforcement may be initiated.~~
- (c) Any person receiving a Notice of Violation must meet compliance standards within the time established in the Notice of Violation.
- (d) Administrative Hearing: If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, the ~~Health Commissioner~~ **City of Green** shall schedule an administrative hearing to determine reasons for non-compliance and to determine the next enforcement activity. Notice of the administrative hearing shall be hand delivered and/or sent registered mail.
- (e) Injunctive Relief: It shall be unlawful for any owner/operator to violate any provision or fail to comply with any of the requirements of this ~~Ordinance regulation pursuant to O.R.C. 3709.211.~~ If a owner/operator has violated or continues to violate the provisions of this ~~Ordinance regulation,~~ the ~~Health District~~ **City of Green** may petition for a preliminary or permanent injunction restraining the owner/operator from activities that would create further violations or compelling the owner/operator to perform abatement or remediation of the violation.

SECTION TWELVE:

APPEAL OF NOTICE OF VIOLATION

Any person receiving a Notice of Violation may appeal the determination of the ~~Health Commissioner~~ **City of Green**. The notice of appeal must be received within 15 days from the date of the Notice of Violation. Hearing on the appeal before the ~~Board of Health or their designee~~ **City Council** shall take place within 45 days from the date of receipt of the notice of appeal. The decision of the ~~the Board of Health~~ **City Council** or their designee shall be final.

SECTION THIRTEEN:

ENFORCEMENT MEASURES AFTER APPEAL

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, 30 within days of the decision of the ~~the Board of Health~~ **City Council** upholding the decision of the ~~Health Commissioner~~ **City of Green**, then representatives of the authorized enforcement agency forward the nuisance to the ~~Summit County Prosecutor~~ **City of Green Law Director** for an appeal for injunctive relief or if authorized by the ~~Board of Health~~ **City Council**, shall enter upon the subject private property to take any and all measures necessary to abate the violation and/or restore the property, ~~O.R.C 3707.02.~~ It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth in this Section.

SECTION FOURTEEN:

COST OF ABATEMENT OF THE VIOLATION

Within 60 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 45 days. If the amount due is not paid within a timely manner as determined by the decision of the ~~Health Commissioner~~ **City of Green** or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this article shall become liable to the ~~SEHD~~ **City of Green** by reason of such violation.

SECTION FIFTEEN:

INJUNCTIVE RELIEF

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this **Ordinance regulation**. If a person has violated or continues to violate the provisions of this Ordinance, the authorized enforcement agency may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

SECTION SIXTEEN:

VIOLATIONS DEEMED A PUBLIC NUISANCE

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this **Ordinance regulation** is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

SECTION SEVENTEEN:

REMEDIES NOT EXCLUSIVE

The remedies listed in this **Ordinance regulation** are not exclusive of any other remedies available under any applicable federal, state or local law and it is in the discretion of the ~~Authorized Enforcement Agency~~ **City of Green** to seek cumulative remedies.

SECTION EIGHTEEN:

PENALTY

Whoever violates or fails to comply with any of the provisions of this Environmental Health Code shall be ~~in violation of ORC 3707.48, 3709.20, 3709.21 or 3709.22,~~ and subject to penalties provided in ORC 3707.99 and 3709.99.

SECTION NINETEEN:

The City of Green finds and determines that all formal actions of this Council concerning and relating to the adoption of this Resolution were taken in open meetings of this Council and any

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deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

SECTION TWENTY:

Council declares this to be an emergency immediately necessary for the preservation of the public peace, health, safety and welfare of the citizens of Green. Provided that this legislation receives the affirmative vote of three-fourths of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest time allowed by law.

ADOPTED: Nov 27, 2012

Molly Stevens
Molly Stevens, Clerk

[Signature]
Joel Reed, Council President

APPROVED: Nov 27, 2012

[Signature]
Richard G. Norton, Mayor

COPIED
SVCE ZONE PARK ROAD ENG
LAW FIN MAY PLAN FIRE

ENACTED EFFECTIVE: Nov. 27, 2012

ON ROLL CALL: Colopy -yes France -yes Humphrey - Absent Knodel -yes
Neugebauer -yes Reed -yes Summerville -yes
Adopted to 0

Suburbanite publication on Dec. 2 and Dec. 9, 2012

Molly Stevens
Molly Stevens, Clerk

GP 11/20/12